

Payment of Finders' Fees for Demand Accounts

Summary Conclusion: A federal savings association's proposed payment of finders' fees to persons who refer individuals to the association who then open demand accounts would not be a violation of the prohibition against payment of interest on demand accounts.

Date: November 28, 2005

Subjects: Home Owners' Loan Act/Savings Association Powers

P-2005-3



Office of Thrift Supervision
Department of the Treasury

1700 G Street, N.W., Washington, DC 20552 • (202) 906-6372

P-2005-3

John E. Bowman, Chief Counsel

November 28, 2005

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Re: Payment of Finders' Fees for Demand Accounts

Dear []:

This responds to your inquiry on behalf of [], a federal savings association (Association). You indicate that the Association would like to pay finders' fees to persons, including existing demand account customers, who refer individuals to the Association who then open demand accounts. You indicate that the fees would be reasonable and that the Association would not intend for the fees to be passed on to the depositor opening the new account. You ask whether such payments would violate the prohibition against payment of interest on demand deposits in section 5(b)(1)(B)(i) of the Home Owners' Loan Act ("HOLA"), 12 U.S.C. § 1464(b)(1)(B)(i), and OTS's implementing regulations at 12 C.F.R. § 561.16 (2005). We conclude that the payments would not be a violation of the prohibition against payment of interest on demand deposits.

HOLA section 5(b)(1)(B)(i) prohibits federal savings associations from paying interest on demand accounts.¹ OTS regulations define the term "demand accounts" to mean "non-interest-bearing demand deposits which are subject to check or to withdrawal or transfer on negotiable or transferable order to the savings association and which are permitted to be issued by statute, regulation, or otherwise and are payable on demand."² Neither this statute nor the OTS regulation defines the term "interest."

¹ 12 U.S.C.A. § 1464(b)(1)(B)(i) (West 2001).

² 12 C.F.R. § 561.16 (2005).

The Board of Governors of the Federal Reserve System (“FRB”) and the Federal Deposit Insurance Corporation (“FDIC”), however, have regulations defining the term “interest” for purposes of the statutory prohibitions on the payment of interest on demand deposits applicable to the institutions they regulate.³ The definition of “interest” the FRB and FDIC have promulgated, in relevant part, is “any payment to or for the account of any depositor as compensation for the use of funds constituting a deposit.”⁴

The FRB long ago considered whether payment of a finder’s fee for a customer who opens a new demand deposit account constitutes the payment of interest within the meaning of its Regulation Q. In 1939, the FRB considered a situation in which a bank offered its checking account depositors \$1.00 for introducing new depositors to the bank who then opened similar checking accounts. The FRB determined that payment of this fee was not a payment of interest to either the referring customer or to the new customer. It reasoned that this was not a payment of interest to the referring customer because the payment was for the service of introducing the new customer, a service that could be rendered by any person, whether or not a deposit customer. It further reasoned that this was not a payment of interest to the new customer because it would not be paid to the new customer and would not inure to the new customer’s benefit.⁵ In 1992, the Office of the Comptroller of the Currency (“OCC”) relied on that FRB opinion to reach the same conclusion with respect to a bank’s practice of paying \$25 to third parties who refer new demand deposit customers to the bank.⁶

OTS has previously indicated that it will generally take a similar approach to interpreting HOLA section 5(b)(1)(B)(i) as the FRB and FDIC take with respect to the comparable statutory provisions on payment of interest on demand accounts that they implement.⁷ Likewise, OTS concludes that a federal savings association may pay a reasonable finder’s fee to a person, including an existing demand account customer, who refers individuals to the association for demand accounts, so long as fees are not paid to, and do not inure to the benefit of, the new customer.

³ Those statutes are section 19(i) of the Federal Reserve Act, 12 U.S.C.A. § 371a (West 2001), and section 18(g) of the Federal Deposit Insurance Act, 12 U.S.C.A. § 1828(g) (West 2001).

⁴ 12 C.F.R. § 217.2(d) (2004) (FRB); 12 C.F.R. § 329.1(c) (2005) (FDIC).

⁵ *Credit for Obtaining New Depositors as Not Constituting Payment of Interest*, 25 Federal Reserve Bulletin 559 (July 1939).

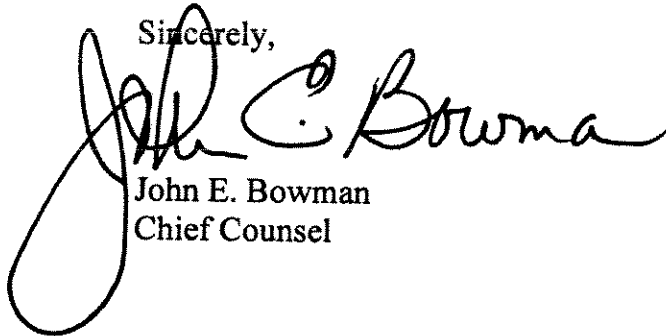
⁶ OCC Interpretive Letter No. 573 (January 28, 1992).

⁷ *Deposits*, 62 Fed. Reg. 54,759, 54,760 (October 22, 1997); OTS Op. Chief Counsel (May 29, 2003) at 3.

In reaching this conclusion, we have considered the precise wording of OTS's regulation at § 561.16(b) and the extent to which finders' fees not specifically listed in the regulation may also be permissible, with due consideration of the regulatory history of that provision.⁸ We have also relied on the factual information and materials you submitted to us. Our conclusions depend on the accuracy and completeness of that information and those materials. Any material differences in the facts or circumstances from those submitted to us and described in this letter could result in different conclusions. Further, this opinion does not address other statutes or regulations that may be applicable, such as 12 U.S.C. § 1831f, which prohibits certain insured depository institutions from accepting funds obtained directly or indirectly by or through deposit brokers.

We trust that this is responsive to your inquiry. If you have further questions, please contact Richard Bennett, Counsel, at (202) 906-7409.

Sincerely,

A handwritten signature in black ink, appearing to read "John E. Bowman". The signature is fluid and cursive, with a large loop at the end of the last name.

John E. Bowman
Chief Counsel

cc: Regional Directors
Regional Counsel

⁸ See *Deposit, Share, and Withdrawable Accounts*, 51 Fed. Reg. 10,810, 10,814-15 (March 31, 1986) (Federal Home Loan Bank Board).